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PDF PAGE 1, COLUMN 1

MOTION TO QUASH INDICTMENT GETS JUDGE'S APPROVAL

Case Ended Suddenly There

Tuesday Morning and Dem-

onstration in Court Was

Not Rebuked by Judge Foster

S. G. M’LENDON, ATTORNEY

FOR WATSON, WINS POINT

Charge of Sending Obscene

Matter Through the Mails Is Quashed Before Jury Is Em-Paneled to Weigh It

(By Associated Press.)

AUGUSTA, Ga., Oct. 21.—The trial here of Thomas E. Watson, charged with sending obscene matter through the mails, ended abruptly at noon today when Federal Judge Rufus E. Foster sustained the motion of the defense quashing the indictment against the Georgia editor.

Immediately upon the announcement of the court's ruling there was a demonstration by the audience, which Judge Foster said:

"It appears in this indictment that the publications alleged to have been sent through the mails in violation of the law are extracts from a complete article. It is my opinion that the government is required to plead the entire article and is not entitled to pick out a few paragraphs here and there, and make them the basis of an indictment."

He added that if the government were allowed to pursue such a course it would be possible to indict a person for sending through the mails a copy of the Bible.

Judge Foster said that in sustaining the motion of the defense, he was not ruling upon the question as to whether or not the articles were obscene, and that the government might at any time proceed to re-indict.

The specific point upon which the indictment was quashed was emphasized by Mr. Watson himself during his brief presentation of what he termed “other phases” of the case. He argued that if the indictment against him should stand, it would be necessary to hold men who send through the mails copies of the Bible, or the criminal code of Georgia, guilty of the same offense, because obscene words appear in both books.

United States District Attorney Akerman submitted a brief argument against the motion. He claimed that it was unnecessary to include the alleged objectionable articles in the indictment in their entirety, and that the indication of specific paragraphs was sufficient. It was at this point that Judge Foster terminated the trial by sustaining the motion dismissing the charge against Watson.

United States District Attorney Akerman refused to discuss his probable future course in connection with the case.

As a preface to the list of opinions submitted by the defense in support of its motion, Mr. McLendon briefly outlined what he said was the foundation upon which the contention of the defense is based.

“Our position,” he said, “is that under federal jurisdiction, the press and speech are as free as the air. The press can deluge the land with filth if it so desires. The remedy lies with the people and not with congress. The press can describe the beauties of heaven, or the horrors of perdition untrammeled, and congress be as helpless as an ivory image of Buddha.”

The contended that the United States supreme court never has actually declared that congress can regulate or limit the right of the press to employ freedom of speech.

At the close of Mr. McLendon’s argument, Judge Foster said he still was of the opinion that the contention as to the liberty of the press was entirely beside the issue.

“I believe,” he said, “that this issue is merely is to determine whether or not the language referred to in the indictment is in violation of the federal law.”

Mr. Watson thereupon announced that he himself would present another phase of the matter when the present motion was disposed of.

Mr. McLendon then said the defense contended that the indictment is incomplete in that the language alleged to be objectionable does not appear. The court, however, ruled that the magazines now are a part of the record, having been furnished by the United States district attorney.

At this point Mr. Watson undertook the conduct of his case, delivering an impassioned argument in support of his claim that under the statute no paper or pamphlet can be prosecuted. He said that the law actually was aimed at persons sending through the mails literature dealing with the vicious and degrading use of drugs. Mr. Watson’s talk was grief.

PDF PAGE 1, COLUMN 2

MAN OF MYSTERY

NO LONGER FIGURES IN THE FRANK CASE

I. W. Fisher Now a Prisoner

On Warrant Sworn Out by J.

C. Shirley, Charging Crim-

inal Libel

SHIRLEY FACES ACCUSER AND DENOUNCES HIM

Preliminary Hearing Will Be Given Fisher in O. H. Puck-ett's Justice of the Peace

Court Wednesday Morning

The “I. W. Fisher sensation” has been exploded in one day through The Journal’s investigation.

Following The Journal’s exposure of the man’s lurid past Monday his story is discredited by all those interested in the Phagan murder case, and Fisher himself is now a prisoner at police headquarters, held on a warrant charging him with criminal libel.

The warrant was drawn late Monday night by J. C. Shirley, a well-known furniture dealer of 809 Marietta street, who was named by Fisher as the man who should take Leo M. Frank’s place in the Tower.

ATTORNEYS DON’T BELIEVE STORY.

Fisher has never been vouched for by the attorneys for Leo M. Frank. They heard of his weird story and brought him here to investigate it. Now apparently they are through with him, and Fisher is not expected to figure further in the Frank case.

The city detectives to whom the man was turned over Monday afternoon after they had waited for thirty-six hours in the corridor of Attorney Luther Rosser’s office, take no stock in his story, and like the Frank attorneys they are washing their hands of him.

“Fisher’s sensation” culminated in a dramatic incident on Monday night, when, after his lengthy examination by the city

detectives Fisher was brought face to face with J. C. Shirley, in the presence of a crowd of detectives and newspaper men.

HIS WEIRD STORY.

Fisher repeated his accusation, which in substance was that he drove to town on April 26 with Shirley, who was going to meet “Hattie,” as Mary Phagan was known to them, at the pencil factory; that he held the horse on Marietta street, while Shirley went to the factory and remained an hour. When he returned, according to Fisher’s story, Shirly exclaimed: “I have played hell generally, and you must get out of town.” They then drove to the station, where Shirley brought Fisher a ticket, according to the latter’s story.”

There was an air of tense excitement about the little room at police headquarters when Fisher told his story tot eh man whom he accuses. Shirley didn’t interrupt with comments or denials until Fisher finished his narrative.

When the man ceased talking, Shirley rose from his chair and walking over to within a few feet of Fisher, looked him squarely in the eye, and exclaimed, “You lie, you hound—you lie.”

A short time later the warrant against Fisher, charging criminal libel, which was drawn in Justice O. H. Puckett’s court was delivered to the police.

Fisher was then lodged in a state cell to be held for the justice court, where his preliminary trial will probably be staged on Wednesday morning.

CONSPIRACY CHARGE.

Mr. Shirley and Charles J. Graham, his attorney, were in conference with Chief of Detectives Lanford early Tuesday morning.

Attorney Graham then stated that he expected to push the criminal libel charge against Fisher.

“The man,” he said, “is either insane or he is a criminal. He should certainly be in an asylum or a penitentiary.”

The attorney asserted that he is making a vigorous investigation of “the origin” of Fisher’s story.

“Certain things about the incident,” he asserted, “indicate a conspiracy, but we will have to make a more exhaustive investigation before such a charge is made. Of course if there has been a conspiracy to besmirch Mr. Shirley’s name, we want those responsible for it, punished.”

It was learned Tuesday afternoon that Attorney Graham was still investigating the suggestion that there had been a conspiracy against Mr. Shirley.

Rumors to the effect that Mr. Graham intended to take the Fisher case before the grand jury could not be confirmed. Solicitor General Hugh M. Dorsey stated Tuesday afternoon that Mr. Graham had not communicated with him at all in regard to the matter.

“I Am Sorry for Poor Fool,”

Says J. C. Shirley of Fisher

“There is no feeling in my heart against the man. I am sorry for the poor fool, but I do not think such an irresponsible person should be allowed his liberty.”

Thus commented J. C. Shirley, the well-known Marietta street furniture dealer, Tuesday morning while discussing Ira W. Fisher and his story, in which he named Mr. Shirley in connection with the Phagan murder case.

“I have taken warrant against Fisher charging him with criminal libel,” says Mr. Shirley, “because I feel that for the protection of society at large something should be done with him. He ought to be in either the penitentiary or the insane asylum, and a jury should decide which.”

“Fisher no doubt mentioned my name because it was the first that came into his mind. He lived for a long time near”

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MAN OF MYSTERY NO LONGER FIGURES IN THE FRANK CASE

(Continued From Page 1.)

my store and loafed around it a great deal."

SHIRLEY GIVES ALIBI.

Mr. Shirley says that he has not felt that he has been called upon to offer an alibi, but for his own curiosity he has established his whereabouts on April 26, the day that Mary Phagan was murdered in the pencil factor.

"Fisher says that he drove into the city with me in my wagon," remarked Mr. Shirley. "My books show that as a matter of fact my delivery wagon was busy all day April 26, and that my negro driver, Louis Bruce, was in charge of it."

"I also recall that a few days after the murder, while it was being discussed by every one, my brother and myself commented upon the difficulty one would have of remembering just where he was at a given hour on a certain date. At that time I recalled that shortly before noon on April 26, I went to the Southern Express company's warehouse at the Terminal station to collect a bill from Norman Moss, one of my customers, who worked on one of the express company's delivery wagons."

"I was under the impression that, it being a holiday, Mr. Moses would get off at noon. However, he did not come in until about 1 o'clock, and I waited at the warehouse for him. I have not mentioned this to either Mr. Moss or the people at the express company's warehouse, but I feel sure they will corroborate me."

DETAILED DENIAL OF EVERY CHARGE MADE BY HENSLEE

Solicitor and Frank's Attor-

neys Finish Exchange of Af-

fidavits and Are Ready for

Hearing on Wednesday

HENSLEE WEPT AND VOTED

“GUILTY,” JURORS SWEAR

Man Under Fire Denies Every

Prejudice Charge – Jurors

Swear They Were Not Influ-

enced Except by Evidence

The solicitor general and the attorneys for the defense of Leo M. Frank completed their exchange of affidavits in the case at 10 o’clock Tuesday morning, and both sides are prepared to enter into the arguments of Frank’s motion for a new trial before Judge L. S. Roan at 9 o’clock Wednesday morning.

Solicitor H. M. Dorsey’s affidavits seek to impeach several of the men who swear that they heard Juror A. H. Henslee make remarks before the Frank trial showing that he was prejudiced. The solicitor also introduces affidavits from all except one of the members of the jury (F. L. V. Smith, who is out of the city) in rebuttal of the defense’s charge that the jury in making its verdict was swayed by the cheering, and the sentiment of the crown against Frank.

Henslee and M. Johenning, who also were attacked by the defense, both make affidavits, denying that they made the remarks attributed to them by the statements of witnesses for the defense.

In all, the solicitor general introduces between thirty-five and forty affidavits.

HEARD AND APPLAUSE.

The affidavits of the members of the jury, except those of the two men under fire, vary only in minor details. The jurors

assert under oath that at no time did they hear any cheering or applause, except that which occurred in the court room in the presence of the judge and the lawyers, and when the verdict was rendered. Then while the jury was being polled they state that they heard cheers outside of the court room, when the waiting throng received the news. The cheers, however, they assert, did not affect their answer to the poll questions.

The members of the jury, without exception, characterize as false, so far as they know, the statements of W. P. Neil and Sampson Kay that men other than the bailiffs and sheriff appointed by the court conversed with any of them.

NO OPINIONS EXPRESSED.

The jurors all declare that in the twenty-nine days in which they were so closely associated with Henslee and Johenning that neither of the men expressed any opinion showing his conviction in the case. The conduct of the two jurors, their follows assert in affidavits, was that of two honest and upright citizens, seeking conscientiously, fairly and impartially to arrive at the truth and to do their duty as citizens.

All declare that Henslee on the first ballot voted doubtful, and that before the second ballot, which was unanimous for conviction, was taken, that he made a talk, discussing certain phases of the evidence.

SAY HENSLEE WEPT.

Juror Henslee in his own affidavit stated that he voted doubtful to occasion a free and full discussion of the case among the members of jury. When the final ballot was taken, he asserts, be in common with every other member of the jury, realized the gravity of his duty, and wept.

Each juror asserts for himself that he was influenced by nothing except the evidence allowed in the case by the court.

HENSLEE’S DENIALS.

Probably the most interesting of the many affidavits filed by the solicitor is that of Henslee, the accused juror. He takes up each affidavit attacking him, and denies that he ever made the remarks attributed to him by their makers.

Henslee declares that when he was

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DETAILED DENIAL OF EVERY CHARGE MADE BY HENSLEE

(Continued From Page 1.)

qualifying as a juror he answered every question truly, and that his mind was open and impartial until “the state carried the burden by an abundance of evidence.”

At no time before the trial, he declares, did he make any statement expressing his belief in the guilt of the accused. He had often said in the discussion of the case, however, he asserts, that

the “man who killed Mary Phagan, whoever he might be, should be hanged.”

He discussed the case a number of times, he said, but never had a conviction in the matter and after the first ten days of the case, he seldom read anything in the newspapers about it except the headlines.

He states that R. L. Gremer, who makes one of the Albany affidavits, is unknown to him. He adds that he understands that Gremer is a man of bad character. T. S. Hawes is the maker of an affidavit in which he swears that the wouldn’t believe Gremer on oath.

NOT IN ALBANY.

Henslee swears that he was not in Albany between June 3 and September 18, and offers the affidavit of a hotel clerk there to support his contention. He doesn’t remember any conversation in Albany with Mack Farkas or with Gremer in June. He does remember talking to Sam Farkas, but he denies that he made any statements showing prejudice.

He denies that he was within 206 miles of Atlanta or Experiment, Ga., at the time Julian A. Lehan claims he made a remark on a train between the two places, showing prejudice.

As to the affidavit of C. P. Stough, Henslee said that after the former’s affidavit was published he went to him and told him that he had lied.

Henslee denies the statements which Samuel Aaron claims he made on the porch of the Elks’ club. The solicitor introduces the affidavits of T. M. Webb and two other men, who swear that they know Aaron and wouldn’t believe him on oath.

DENIES PREJUDICE.

As to the affidavits of J. J. Nunnally and W. L. Ricker, Henslee admits that he might have mentioned the case in talking to them,

but denies that he made an expression which might indicate bias or prejudice.

The affidavits of Shi Gray, S. M. Johnson and John M. Holmes, of Sparta, are considered among the strongest against Henslee. In answering them Henslee points to the statement in their depositions that he told them that he had been drawn as a juror for the Frank case. He was in Athens on July 25, he asserts and came from there here, where he received his subpoena, at 5 o'clock in the afternoon at his residence, at 74 Oak street. He did not leave the city until after the trial, and consequently says that he could not have possibly had a conversation with the three gentlemen in Sparta, after he had been drawn as a juror.

He did not go to Sparta until September 2, he says, after the trial. Then the gentlemen named congratulated him on the verdict in the case, he says, and in the course of the conversation and in answer to questions, he then said that he believed Frank guilty and also that he believed the defendant in the murder case to be a pervert.

After his denial of the affidavits, saying that he is prejudiced, Henslee made the same statements given in the affidavits by the other jurors.

JOHENNING'S REPLY.

In his affidavit M. Johenning, the other juror under fire, denies flatly that he made the statement attributed to him by H. C. Lovenhart.

At one time, not in the month named by them, however, Johenning states that he held a conversation with Mrs. Jennie G. Lovenhart and Miss Mariam Lovenhart, and that they asked him his opinion of the Frank case. He replied, he says, "Well, the newspapers seem to have him convicted already." Mrs. Lovenhart expressed her belief in Frank's innocence, int is said, and when Miss Miriam Lovenhart persisted in the effort to draw him out, Johenning states that he did remark: "Well, the outlook doesn't

seem from the papers to be very bright for him. I think he is going to have a hard time in getting aloose."

There was no prejudice or bias on his mind when he was sworn, Johenning declares.

The other jurors who make affidavits are W. F. Medcalf, F. E. Winburn, A. L. Wisbey, W. M. Jeffries, A. Townsend, J. T. Orsburn and C. J. Bosshardt.

Deputy Sheriff Plennie minor makes an affidavit in which he swears that the charge that a spectator grabbed a juror's arm as the jury was passing out of the court room is not true.

DIDN'T ADDRESS JUROR.

He saw a spectator, he says, who, he thought, addressed a remark to a member of the jury, although the spectator did not rise form his chair. He went to this spectator and charged him with speaking to a juryman. The man denied that he had made any remark, and the two men sitting on either side of him, confirmed his statement, "I was convinced that I had made a mistake," Deputy Minor asserts.

HEARD NO CHEERS.

Bailiffs C. P. Huber and A. F. Pennington and Deputies W. M. Hunter and R. B. Deavors, who were in charge of the jury at the time several men are alleged to have walked up to them on the streets and addressed remarks to them, deny that any such incident occurred. The two bailiffs deny that they heard cheers on August 22 and August 23, when they accompanied the jury to lunch and to their hotel on those days.

W. J. Clayton makes an affidavit saying that he knows W. P. Neil, who charges that outsiders spoke to the jurymen, and that he wouldn't believe Neil on oath.

An affidavit of a citizen, who declares that he would not believe C. P. Stough on oath is also introduced.

UPHOLD JOHENNING.

F. W. McGarity, Dr. W. C. Robinson and others, who state that they have known Juror Johenning for years, testify to his good character and credibility.

A number of the most prominent citizens of Barnseville, among them W. M. Howard, J. C. Collier, T. W. Cochran, P. L. Gordy, J. E. Howard and C. O. Summers, make affidavits testifying to the good character of Henslee, as does J. D. Lockridge, a well-known man of Douglas, Ga.

While he asserts that he has been hampered by a lack of time, Solicitor General Dorsey stated Tuesday that he would be willing to enter into the argument of the Frank motion for a new trial on Wednesday morning. The attorneys for the defense have been ready for some time.

It has not yet been decided where Judge Roan will sit while the motion is argued, as the court room on the fourth floor of the Thrower building is now being used by the court of Judge Andrew Calhoun.